

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	88 MED 563
MARIO G. TOLENTINO, M.D.,	:	90 MED 291
RESPONDENT.	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Mario G. Tolentino, M.D.
2040 West Wisconsin Avenue
Milwaukee, WI 53233

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mario G. Tolentino, Respondent herein, (D.O.B. 4/6/31) is duly licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license number 14789, which license was first granted on 9/24/63.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 2040 West Wisconsin Avenue, Milwaukee, WI 53233.
3. Respondent's specialty area of practice is proctology.
4. That Patient 1 was referred to Respondent by another physician and first saw Respondent in his professional capacity on July 27, 1973, and continued as his patient through March 1986.

5. That during the thirteen years Respondent treated Patient 1, she was married and he treated her for numerous rectal and colon problems, including irritable bowel syndrome.

6. That irritable bowel syndrome can be aggravated by emotional stress.

7. That beginning in 1980 Respondent and Patient 1 began engaging in non-intercourse sexual contact which took place on numerous occasions in Respondent's office and other locations. That beginning in June 1981 and continuing through March 1986, Respondent and Patient 1 had sexual contact and sexual intercourse on numerous occasions in Respondent's office and other locations.

8. That during the time Respondent and Patient 1 were having the sexual relationship: they each considered it a love affair; Respondent and his wife divorced; Patient 1 separated from her husband for a period of time; and, Respondent asked Patient 1 to marry him.

9. That Respondent by entering into an extramarital sexual relationship with Patient 1 while he was treating Patient 1 for irritable bowel syndrome, a condition which is aggravated by stress, engaged in conduct below the minimal standards of the profession and exposed Patient 1 to unreasonable risk of harm to which a minimally competent physician would not expose a patient.

CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has authority to enter into this stipulated resolution pursuant to secs. 227.44(5) and 448.02(5), Wis. Stats.

2. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

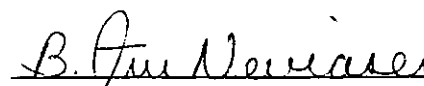
3. That Respondent's conduct, as set out above, is unprofessional conduct as defined by Wis. Stats. sec. 448.02(3), and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's voluntary surrender of his license to practice medicine and surgery in the State of Wisconsin is hereby accepted, effective March 31, 1993.

IT IS FURTHER ORDERED that Respondent shall never reapply for a license to practice medicine and surgery in the State of Wisconsin.

Dated at Madison, Wisconsin this 16th day of December, 1992.


B. Ann Neviasser, Secretary
Wisconsin Medical Examining Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
	:	88 MED 563
MARIO G. TOLENTINO, M.D.,	:	90 MED 291
RESPONDENT.	:	

It is hereby stipulated and agreed, by and between, Mario G. Tolentino, M.D., Respondent; Donald R. Peterson of Peterson, Johnson & Murray, S.C., attorneys for Respondent; and, John R. Zwig, attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding (file 88 MED 563) and a pending investigation (file 90 MED 291) by the Department of Regulation and Licensing, Division of Enforcement. Investigative file 90 MED 291, contains allegations that while Respondent was treating another female patient in a professional relationship from October 1985 through March 1986, that Respondent entered into a sexual relationship with that patient. Respondent has admitted that the woman was his patient, but has denied having a sexual relationship with her while she was his patient.

2. The parties agree that this stipulated resolution may be presented directly to the Wisconsin Medical Examining Board and need not be presented to the Administrative Law Judge appointed in this matter. The parties consent to the resolution of investigation 90 MED 291 by stipulation and without the issuance of a formal complaint.

3. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

4. Respondent is aware of his right to seek legal representation and has exercised that right prior to signing this stipulation.

5. Respondent does not admit the allegations against him, but agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

6. That Respondent agrees to voluntarily surrender his license to practice medicine and surgery in the State of Wisconsin, effective March 31, 1993 and agrees never to reapply for licensure in Wisconsin.

7. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

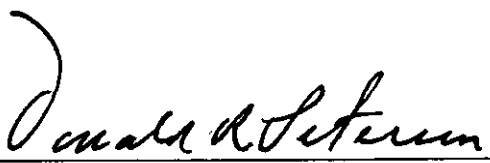
8. The parties to this stipulation agree that the Respondent, his attorney, and the attorney for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

9. The parties to this stipulation agree that the member of the Board appointed as the investigative advisor in this matter may appear before the Board in open or closed session for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

Dated this 16 day of December, 1992.


Mario G. Tolentino, M.D.
Respondent

Dated this 16 day of December, 1992.


Donald R. Peterson
Peterson, Johnson & Murray, S.C.
Attorneys for Respondent

Dated this 11th day of December, 1992.


John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

ATY2-3178

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is December, 22, 1992.